

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Barney Sampson Co., Ltd. :  
for Redetermination of a Deficiency or for Refund :  
of Franchise Tax on Business Corporations under :  
Article 9-A of the Tax Law for the Years 1974 and :  
1975. :

AFFIDAVIT OF MAILING

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Calicut Corp. :  
for Redetermination of a Deficiency or for Refund :  
of Franchise Tax on Business Corporations under :  
Article 9-A of the Tax Law for the Year 1976. :

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Barney Sampson Co., Ltd., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barney Sampson Co., Ltd.  
c/o Rachael C. Sampson, Pres.  
40 W. 57th St.  
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
7th day of October, 1983.

Susan Powell

Connie A. Hagelund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Barney Sampson Co., Ltd. :  
for Redetermination of a Deficiency or for Refund :  
of Franchise Tax on Business Corporations under :  
Article 9-A of the Tax Law for the Years 1974 and :  
1975. :

AFFIDAVIT OF MAILING

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Calicut Corp. :  
for Redetermination of a Deficiency or for Refund :  
of Franchise Tax on Business Corporations under :  
Article 9-A of the Tax Law for the Year 1976. :  
\_\_\_\_\_ :

State of New York  
County of Albany


Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Steve Schmelkin the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steve Schmelkin  
Schmelkin & Schmelkin  
54 W. Broad St., Fleetwood Station  
Mt. Vernon, NY 10552

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
7th day of October, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 7, 1983

Barney Sampson Co., Ltd.  
c/o Rachael C. Sampson, Pres.  
40 W. 57th St.  
New York, NY 10019

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Steve Schmelkin  
Schmelkin & Schmelkin  
54 W. Broad St., Fleetwood Station  
Mt. Vernon, NY 10552  
Taxing Bureau's Representative

## STATE TAX COMMISSION

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Calicut Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Calicut Corp.  
c/o Rachael C. Sampson, Pres.  
40 W. 57th St.  
New York, NY 10019

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
7th day of October, 1983.

Susan Powell

James A. Hayes

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

October 7, 1983

Calicut Corp.  
c/o Rachael C. Sampson, Pres.  
40 W. 57th St.  
New York, NY 10019

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Steve Schmelkin  
Schmelkin & Schmelkin  
54 W. Broad St., Fleetwood Station  
Mt. Vernon, NY 10552  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
BARNEY SAMPSON CO., LTD. :  
for Redetermination of a Deficiency or for :  
Refund of Franchise Tax on Business Corporations :  
under Article 9-A of the Tax Law for the Years :  
1974 and 1975. :

DECISION

---

In the Matter of the Petition :  
of :  
CALICUT CORP. :  
for Redetermination of a Deficiency or for :  
Refund of Franchise Tax on Business Corporations :  
under Article 9-A of the Tax Law for the Year :  
1976. :

---

Petitioner, Barney Sampson Co., Ltd., 40 West 57th Street, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1974 and 1975 (File No. 25173).

Petitioner, Calicut Corp., 40 West 57th Street, New York, New York 10019, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the year 1976 (File No. 25426).

A consolidated formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 25, 1982 at 9:20 A.M. Petitioners appeared by

Schmelkin & Schmelkin (Stephen M. Schmelkin, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (Barry M. Bresler, Esq., of counsel).

### ISSUE

Whether the Audit Division properly required petitioner Barney Sampson Co., Ltd. and its subsidiary Calicut Corp. to file separate franchise tax returns.

### FINDINGS OF FACT

1. On September 8, 1978, the Audit Division issued to petitioner Barney Sampson Co., Ltd. ("Sampson Co.") a Notice of Deficiency, asserting additional franchise taxes due under Article 9-A of the Tax Law for the year 1974 in the amount of \$2,819.00, plus interest. The Statement of Audit Adjustment, under the same date, set forth the following explanation for the deficiency:

"The above computation reflects taxation on an individual basis. Combined reports are discretionary with the Tax Commission and in conjunction we can find no evidence of this corporation ever being granted permission to file in this manner."

On September 8, 1978, the Audit Division also issued to Sampson Co. a Statement of Tax Reduction or Overpayment, reflecting a credit for 1975 in the amount of \$124.00, which was reduced to zero by application against the deficiency for 1974. Again, the Audit Division recomputed Sampson Co.'s tax on an individual basis. (The Audit Division made other adjustments to Sampson Co.'s reports for 1974 and 1975, but these adjustments have not been contested.)

On March 1, 1979, the Audit Division issued to petitioner Calicut Corp. ("Calicut") a Notice of Deficiency, asserting additional franchise taxes due under Article 9-A for the year 1976 in the amount of \$4,465.00, plus interest. The deficiency was founded upon the recomputation of Calicut's tax on an individual basis.

2. Calicut is the wholly-owned subsidiary of Sampson Co. The parent company is owned by four members of the Sampson family. Mr. Bernard (Barney) Sampson is president of Sampson Co. and in 1976 was also president of Calicut. During 1976 his wife Rachel was vice-president of Calicut.

3. Both corporations import men's apparel from European manufacturers and sell to haberdashers.

4. Calicut was incorporated under the laws of this state in 1974 in order to provide Sampson Co. with an additional "selling arm". Retailers in competition with each other did not wish to purchase from the same resource; incorporation of Calicut thus allowed Sampson Co. and Calicut together to sell to more customers. On the other hand, competing European manufacturers did not wish to sell to the same buyer; establishment of Calicut allowed the two corporations to purchase the products of a greater number of manufacturers.

5. Sampson Co. contributed to Calicut all capital necessary for it to commence business and advanced the subsidiary additional funds as the need therefor arose. The corporations furnished cross-guarantees to the factor which financed their respective accounts receivable.

6. Petitioners shared offices and employees. A potential customer visiting the Sampson Co./Calicut premises was shown the lines sold by Sampson Co. and also those sold by Calicut. The salesperson wrote any Sampson Co. orders on that company's forms and any orders for Calicut merchandise on Calicut forms.

7. Confusion occasionally arose among buyers when remitting payment and among manufacturers when billing because they were accustomed to dealing solely with Sampson Co. A buyer might remit a check payable to Sampson Co. when he had in fact purchased a Calicut line. A manufacturer might bill Sampson Co.



for merchandise, half of which was to be sold by Sampson Co. and half by Calicut; in such instance, Sampson Co. paid the entire bill. At the close of each month, petitioners' bookkeeper corrected any errors in each company's account balances.

8. Petitioners maintain that during the years at issue, Calicut would have been unable to function apart from Sampson Co. and had no separate identity. Calicut was able to purchase from manufacturers only because of the rapport Sampson Co. had developed with them. And Calicut had no employees or facilities of its own.

9. For the year 1974, Sampson Co. received two extensions of time within which to file its franchise tax report. When petitioner filed its report for that year, on or about September 12, 1975, it did so on a combined basis with Calicut. Appended to the report was a letter prepared by petitioners' accountants and signed by Mr. Sampson, seeking the permission of the Audit Division to file a combined franchise tax report. Petitioners never received a response to that letter. Apparently on the assumption that permission to file on a combined basis had not been denied, petitioners filed combined reports for 1975 and 1976.

10. Petitioners filed consolidated federal income tax returns for 1974, 1975 and 1976.

#### CONCLUSIONS OF LAW

A. That subdivision (4) of section 211 of the Tax Law authorizes the State Tax Commission, in its discretion, to require or permit a parent corporation and its wholly-owned subsidiary to make a report on a combined basis. However, no combined report covering a foreign corporation not doing business in New York may be required, unless the Commission deems such a report necessary

because of intercompany transactions or some agreement, understanding, arrangement or transaction which distorts income or capital, in order to properly reflect tax liabilities.

B. That prior to 1976, the Tax Commission provided, by regulation, that in determining whether the tax would be computed on a combined basis, it would consider various factors, including the following:

- (1) Whether the corporations were engaged in the same or related lines of business;
- (2) Whether any of the corporations were in substance merely departments of a unitary business conducted by the entire group;
- (3) Whether the products of any of the corporations were sold to or used by any of the other corporations;
- (4) Whether any of the corporations performed services for, or loaned money to, or otherwise financed or assisted in the operations of any of the other corporations;
- (5) Whether there were other substantial intercompany transactions among the constituent corporations. Former 20 NYCRR 5.28(b).

Petitioners substantially fulfilled the above criteria and were therefore improperly and erroneously denied permission by the Audit Division to file combined reports for the years 1974 and 1975. The two corporations were engaged in the same line of business; they were parts of a unitary business under the same management, sharing offices and employees; they cross-guaranteed the financing of their accounts receivable by an outside factor; and Sampson Co. provided financial assistance to Calicut when necessary. Finally, the sole purpose for organizing Calicut was to augment the purchasing and selling power of Sampson Co. See Matter of Sapolin Paints, Inc., State Tax Comm., January 10, 1983.

C. That the Audit Division properly recomputed petitioners' franchise tax liability for 1976 on separate bases. The regulation presently in force expressly requires that corporate taxpayers request and obtain the leave of this Commission prior to filing a combined report. The filing of a combined report does not itself constitute an application for permission to file on such basis. Further, the application must be received within 30 days after the close of the corporations' taxable year (20 NYCRR 6-2.4, effective for taxable years commencing on or after January 1, 1976). Petitioners failed to follow this prescribed procedure.


D. That the petitions of Barney Sampson Co., Ltd. and Calicut Corp. are granted to the extent indicated in Conclusion of Law "B"; the Notice of Deficiency issued on September 8, 1978 is accordingly cancelled; and the Notice of Deficiency issued on March 1, 1979 is sustained in full.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER